

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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February 3, 2015

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RE: WBCMT 2006-C29 NC Office, LLC v. Reads, LLC
Civil Action No. N13L-12-080 WCC

_____ **On Defendant's Motion to Dismiss - DENIED**

Dear Counsel:

I have reviewed Defendant's Motion to Dismiss in the above foreclosure matter. To say this case is a procedural quagmire would be an understatement. On December 26, 2013 Plaintiff filed this foreclosure action. On January 30, 2014, instead of answering the Complaint, Defendant filed a Motion to Dismiss. While it appears briefing was ongoing regarding Defendant's Motion, Plaintiff filed an Amended Complaint. Instead of requiring an answer to the Amended

Complaint or the filing of a new Motion to Dismiss, it appears Judge Cooch allowed additional briefing on the originally-filed Motion to Dismiss. The case was subsequently reassigned to me once a conflict was discovered by Judge Cooch.

Unfortunately the Court did not focus on the procedural context of the litigation until it began reading the briefs filed with the Motion to Dismiss. It should be obvious to everyone that the preferred course of action would have been to deny the Motion as moot once the Amended Complaint was filed and require Defendant to either refile its Motion to Dismiss or file an Answer to the Amended Complaint. While I cannot undo the unusual procedural posture of this case, it appears to the Court that even Defendant acknowledges in its brief that the validity of the assignment of negotiable instruments is based upon the jurisdiction where the instrument was located at the time it was assigned.¹ In the Amended Complaint, Plaintiff has alleged the assignments did not occur in Delaware, thus, there are, at a minimum, some factual disputes that require additional discovery. As such, at this juncture the Court is going to deny Defendant's Motion to Dismiss and allow the case to proceed with discovery. Defendant is to answer the Complaint within 30 days of this Order. By this decision, the Court is not foreclosing Defendant from making substantive arguments which are set forth in the Motion to Dismiss when and if a Motion for Summary Judgment is filed. However, at this point, such arguments are premature in light of the assertions made in the Amended Complaint.

As counsel continues in the litigation of this matter, the Court also asks that there be some recognition that there is no dispute that there is a debt here that is not being paid and even if Plaintiff turns out not to be the correct party to whom the debt is owed, it is not likely Defendant walks away from the loan. Some reality discussion with both of your clients appears to be needed particularly when litigation will just add to the overall cost of the dispute. The Court is sure this is obvious to counsel but is concerned that the relationship between your clients has perhaps deteriorated to the point that they are not clearly appreciating the consequences. I will rule on whatever is filed but this appears to be litigation that could use a dose of common sense.

¹ Defendant's Reply Brief at 1, *WBCMT v. Reads, LLC*, C.A. No. N13L-12-080 (Del. Super. May 21, 2014), Trans. I.D. No. 55482122.

Finally, there is also a Motion to Consolidate pending before the Court and based upon the decisions that have been issued in this case as well as the companion case of Reads, LLC v. WBCMT, that Motion is denied as moot.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Cailah Kerchevall, Civil Case Manager